Internal Revenue
bulletin

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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

T.D. 8893, page 143.

Final regulations under section 6695 of the Code provide income tax return preparers with two alternative means of meeting the requirement that a preparer retain the copy of the return or claim manually signed by the preparer.

EMPLOYEE PLANS

Rev. Rul. 2000–33, page 142.

Cash or deferred arrangements; nonqualified deferred compensation. This ruling specifies the criteria to be met in order to automatically defer a certain percentage of an employee's compensation into that employee's account in an eligible deferred compensation plan sponsored by the eligible employer.

Rev. Rul. 2000–35, page 138.

Section 403(b) plans; elective deferrals. This ruling specifies the criteria to be met in order to automatically reduce an employee's compensation by a certain amount and have that amount contributed as an elective deferral to an employer's section 403(b) plan.

Rev. Rul. 2000–36, page 140.

Qualified plan; default rollover; involuntary cash-out. This ruling provides that if plan participants are given adequate notice including their right to elect a cash distribution, a qualified plan can be amended to permit a default direct rollover under section 401(a)(31) of an involuntary cash-out without violating section 411(d)(6) of the Code.

Announcement 2000–60, page 149.

Prototype plans, automatic enrollment features. This announcement informs employers and prototype plan sponsors of the availability of automatic enrollment features in prototype section 401(k) plans.

Announcement 2000–65, page 150.

A public hearing on proposed regulations (REG–117162–99, 2000–15 I.R.B. 871) relating to the tax treatment of cafeteria plans is scheduled for August 17, 2000.

ADMINISTRATIVE

Rev. Proc. 2000–31, page 146.

Form 1040 IRS *e-file* program. Participants in the Form 1040 IRS *e-file* program (which now includes the former online filing program) are informed of their obligations to the Service, taxpayers, and other participants. Rev. Proc. 98–50 and Rev. Proc. 98–51 modified and superseded.

Announcement 2000–63, page 149.

This document withdraws proposed regulations (FI–42–90, 1992–1 C.B. 1072) relating to thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by section 593 of the Code.

Announcement 2000–64, page 149.

Supplemental information on short-term Treasury bills for the 1999 edition of Publication 1212, *List of Original Issue Discount Instruments*, is now available.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 401.—Qualified Pension, Profit-Sharing And Stock Bonus Plans

26 CFR 1.401(a)(31)–1: Requirement to offer direct rollover of eligible rollover distributions; questions and answers.

Whether a qualified defined contribution plan can be amended to permit a default direct rollover of an involuntary cash-out to an individual retirement arrangement. See Rev. Rul. 2000–36, page 140.

Section 403.—Taxation of Employee Annuities

26 CFR 1.403(b)–1: Taxability of beneficiary under annuity contract purchased by a section 501(c)(3) organization or public school.

Section 403(b) plans; elective deferrals. This revenue ruling specifies the criteria to be met in order to automatically reduce an employee's compensation by a certain amount and have that amount contributed as an elective deferral to an employer's section 403(b) plan.

Rev. Rul. 2000–35

ISSUE

Will employer contributions to an annuity contract described in § 403(b) of the Internal Revenue Code (the "Code") fail to be considered to be made under a salary reduction agreement merely because they are made pursuant to an arrangement under which a fixed percentage of an employee's compensation is contributed to the annuity contract unless the employee affirmatively elects to receive the amount in cash?

FACTS

Employer X, an organization described in § 501(c)(3) which is exempt from tax under § 501(a), maintains Plan A, a plan described in § 403(b) of the Code and § 3(2) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Under Plan A, any employee of Employer X, including a newly hired employee, may elect to have Employer X make contributions on the employee's behalf towards the purchase of an annuity contract in lieu of receiving that amount as cash compensation that would otherwise be payable to the employee. The employee may designate the amount of these compensation reduction contributions as a percentage of the employee's compensation, subject to certain limitations set forth in the plan. These compensation reduction contributions satisfy the § 403(b) requirements applicable to contributions made pursuant to a salary reduction agreement, and are treated for all purposes as made pursuant to a salary reduction agreement under the plan.

Plan A also provides that Employer X will make matching contributions on account of an employee's compensation reduction contributions up to a specified percentage of the employee's compensation. Plan A does not permit any other contributions.

Plan A is amended, effective the next January 1, to add an automatic compensation reduction election feature. Under this feature, each employee's compensation will automatically be reduced by 4 percent and this amount will be contributed towards the purchase of an annuity contract under Plan A unless the employee affirmatively elects to receive cash or have a different percentage contributed. Both before and after the amendment, the employee is not able to receive, prior to a distributable event described in § 403(b)(11), amounts contributed towards the purchase of an annuity contract. Both before and after the amendment, Plan A and the annuity contracts purchased thereunder satisfy the requirements of § 403(b). An election not to make compensation reduction contributions or to contribute a different percentage of compensation can be made at any time.

Under Plan A as amended, in the case of a newly hired employee, an election not to make compensation reduction contributions or to contribute a different percentage is effective for the first pay period and for subsequent pay periods (until superseded by a subsequent election) if filed when the employee is hired or if filed within a reasonable period thereafter ending before the compensation for the first pay period is currently available. Thus, if a newly hired employee files an election to receive cash in lieu of compensation reduction contributions and the election is filed when the employee is hired or within a reasonable period thereafter ending before the compensation is currently available, then no compensation reduction contributions for the first pay period or subsequent pay period are made on the employee's behalf to Plan A until the employee makes a subsequent affirmative election to reduce his or her compensation. Elections filed at a later date are effective for payroll periods beginning in the month next following the date the election is filed.

At the time an employee is hired, the employee will receive a notice that explains the automatic compensation reduction election and the employee's right to elect to have no such compensation reduction contributions made to the plan or to alter the amount of those contributions, including the procedure for exercising that right and the timing for implementation of any such election.

In the case of an employee hired before the January 1 effective date who has not elected compensation reduction contributions of at least 4 percent, Plan A as amended provides that the automatic election will become effective on the first pay period beginning on or after January 1 unless the employee elects during a specified reasonable period ending on January 1 to receive cash or have a different amount contributed to Plan A. Thus, if a current employee files an election to receive cash in lieu of compensation reduction contributions and the election is filed during the reasonable period ending on the January 1 effective date, then no compensation reduction contributions for the first pay period beginning on or after the January 1 effective date or for subsequent pay periods are made on the employee's behalf to Plan A until the employee makes a subsequent affirmative election to reduce his or her compensation. In the case of a current employee who has a compensation reduction contribution election in effect for less than 4 percent, who does not make a new compensation reduction contribution election during the reasonable period ending on the January 1 effective date, and whose compensation is therefore automatically reduced by 4 percent, if that employee thereafter makes an affirmative election to reduce his or her compensation by another

amount (or no amount), then that affirmative election will continue in effect until the employee makes a subsequent affirmative election for a different amount.

At the beginning of the reasonable period ending on the January 1 effective date, each current employee receives a notice that explains the new automatic compensation reduction election and the employee's right to elect to have no such compensation reduction contributions made to the plan or to alter the amount of those contributions, including the procedure for exercising that right and the timing for implementation of any such election.

Each employee is notified annually of his or her compensation reduction percentage, and of his or her right to change the percentage, including the procedure for exercising that right and the timing for implementation of any such election.

Plan A provides that both matching contributions and compensation reduction contributions will be invested in accordance with the participant's election among a broad range of annuity contracts. If no investment election is made by a participant, contributions are invested in an annuity contract providing an investment return based on the return on a balanced fund that includes both diversified equity and fixed-income investments[1].

LAW AND ANALYSIS

Section 403(b)(1) of the Code provides that amounts contributed by certain employers, including an employer described in § 501(c)(3) which is exempt from tax under § 501(a), for the purchase of an annuity contract for an employee of such an employer are excluded from the gross income of the employee if certain requirements are satisfied.

Contributions to purchase annuity contracts under § 403(b) may be made either pursuant to a salary reduction agreement or not pursuant to a salary reduction agreement. Contributions made pursuant to a salary reduction agreement are subject to different requirements than are contributions not made pursuant to a salary reduction agreement. (See, for example, §§ 403(b)(1)(E), 403(b)(7)(A)(ii), 403(b)–(11) and 403(b)(12).) In general, a contribution is not treated as made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement. See §§ 402(g)(3)(C) and 403(b)(12).

Section 1.403(b)–1(b)(3)(i) of the regulations prescribes rules applicable to contributions made pursuant to a salary reduction agreement, including rules relating to the frequency and revocability of such agreements and to the salary to which such agreements apply.

Section 1450(a) of the Small Business Job Protection Act of 1996 ("SBJPA") provides that, for purposes of § 403(b) of the Code, the frequency that an employee is permitted to make a salary reduction agreement, the salary to which such an agreement may apply and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under § 401(k). Section 1450(a) of SBJPA is effective for taxable years beginning after December 31, 1995. Thus, § 1.403(b)–1(b)(3)(i) of the regulations does not reflect current law, and the rules relating to these aspects of salary reduction agreements are the same as those for cash or deferred elections under § 401(k).

Section 401(k) provides that a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan can meet the requirements of § 401(a) even if it includes a qualified cash or deferred arrangement. Section 401(k) also sets forth the requirements that a cash or deferred arrangement must satisfy in order to be a qualified cash or deferred arrangement.

Section 1.401(k)–1(a)(2)(i) defines a cash or deferred arrangement as an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of § 401(a).

Section 1.401(k)–1(a)(3)(i) defines a cash or deferred election as any election (or modification of an earlier election) by an employee to have the employer either provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available or contribute an amount to a trust (or provide an accrual or other benefit) under a plan deferring the receipt of compensation. Section 1.401(k)–1(a)(3)(iv) provides that a cash or deferred election does not include a one-time irrevocable election, made at the time an employee commences employment with the employer or upon the employee's first becoming eligible under any plan of the employer, to have contributions made by the employer on the employee's behalf to the plan (or to any other plan of the employer) equal to a specified amount or percentage of the employee's compensation. Section 1.401(k)–1(g)(3) defines elective contributions as employer contributions made to a plan that were subject to a cash or deferred election under a cash or deferred arrangement.

Revenue Ruling 2000–8, 2000–7 I.R.B. 617 (February 14, 2000), holds that where a newly hired or a current employee has an effective opportunity to elect to receive an amount in cash or have that amount contributed by the employer to a profit-sharing plan, those employer contributions made on the employees' behalf to the plan in lieu of receipt of cash compensation will not fail to be considered elective contributions within the meaning of § 1.401(k)–1(g)(3) made under a qualified cash or deferred arrangement within the meaning of § 401(k) merely because they are made pursuant to an arrangement under which, in any case in which an employee does not affirmatively elect to receive cash, the employee's compensation is reduced by a fixed percentage and that amount is contributed on the employee's behalf to the plan.

The definition of a cash or deferred election in § 1.401(k)–1(a)(3)(i) requires that the employee have an election between the employer paying cash (or some other taxable benefit) to the employee or making a contribution to a trust on behalf of the employee. The regulation does not require that the employee receive an amount in

[1]The Department of Labor has advised Treasury and the Service that, under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), fiduciaries of a plan must ensure that the plan is administered prudently and solely in the interest of plan participants and beneficiaries. While ERISA § 404(c) may serve to relieve certain fiduciaries from liability when participants or beneficiaries exercise control over the assets in their individual accounts, the Department of Labor has taken the position that a participant or beneficiary will not be considered to have exercised control when the participant or beneficiary is merely apprised of investments that will be made on his or her behalf in the absence of instructions to the contrary. See 29 CFR § 2550.404c–1 and 57 F.R. 46924.

cash in any case in which the employee does not make an affirmative election to have that amount contributed to the trust. Similarly, under § 403(b), there is no requirement that an employee receive an amount in cash in any case in which the employee does not make an affirmative election to have that amount contributed to an annuity contract. Thus, a contribution to purchase an annuity contract under § 403(b) will not fail to be made under a salary reduction agreement merely because, when an employee fails to make an affirmative election with respect to an amount of compensation, that amount is contributed on the employee's behalf to an annuity contract, provided that the employee had an effective opportunity to elect to receive that amount in cash. The employee has an effective opportunity to elect to receive an amount in cash as required under § 1.401(k)–1(a)(3)(i) if the employee receives notice of the availability of the election and the employee has a reasonable period before the cash is currently available to make the election.

In this case, compensation reduction contributions made by Employer X to Plan A, including those made on behalf of a newly hired employee who has not filed an election to the contrary and those made on behalf of a current employee who has elected less than 4-percent compensation reduction contributions, are amounts contributed pursuant to a procedure under which the employee receives a notice explaining his or her rights to have no compensation reduction contributions made and, after receiving the notice, the employee has a reasonable period before the cash is currently available to elect to receive the cash in lieu of having it contributed towards the purchase of an annuity contract. Thus, an employee has an effective opportunity to elect to receive cash or have a contribution made towards the purchase of an annuity contract. In addition, the employee is not able to receive, prior to a distributable event described in § 403(b)(11), amounts contributed towards the purchase of an annuity contract. Finally, compensation reduction contributions made under the plan are not contributions made pursuant to a one-time irrevocable election because the employee can change the election in the future. Consequently, the compensation reduction contributions under Plan A as amended are contributions made pursuant to a salary reduction agreement described in § 403(b).

HOLDING

Where, as in this case, a newly hired or current employee has an effective opportunity to elect to receive an amount in cash or have that amount contributed by the employer to an annuity contract described in § 403(b), those contributions made on the employee's behalf to the annuity contract in lieu of receipt of cash compensation will not fail to be considered to be made under a salary reduction agreement merely because they are made pursuant to an arrangement under which, in any case in which an employee does not affirmatively elect to receive cash, the employee's compensation is reduced by a fixed percentage and that amount is contributed on the employee's behalf to the annuity contract. This holding would be the same if (1) Plan A were described in § 403(b)(1)(A)(ii) (relating to arrangements maintained by State and local school systems), or (2) the funding vehicles under Plan A were custodial accounts described in § 403(b)(7) or retirement income accounts described in § 403(b)(9), provided the requirements of such respective Code sections are otherwise satisfied.

PAPERWORK REDUCTION ACT

The collection of information contained in this revenue ruling has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1694.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue ruling are in the third, fifth, seventh and eighth paragraphs in the section headed "FACTS" and in the tenth paragraph in the section headed "LAW AND ANALYSIS." The collections of information are required to enable personnel in the Tax Exempt and Government Entities Division of the Internal Revenue Service to determine if an employer's retirement plan satisfies the requirements to obtain favorable tax treatment and to enable certain employee elections to meet the requirements of § 403(b). The collections of information are required to obtain a benefit. The likely respondents are State and local government entities and not-for-profit institutions.

The estimated total annual reporting burden is 175 hours. The estimated annual burden per respondent is 1 hour and 45 minutes. The estimated number of respondents is 100. The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue ruling is Roger Kuehnle of the Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, call the Employee Plans' taxpayer assistance telephone service at (202) 622-6074/6075 (not toll-free numbers) between 1:30 and 3:30 p.m. Eastern Time, Monday through Thursday.

Section 411.—Minimum Vesting Standards

26 CFR 1.411(d)–4: Section 411(d)(6) protected benefits.
(Also, § 401; § 1.401(a)(31)–1.)

Qualified plan; default rollover; involuntary cash-out. This ruling provides that if plan participants are given adequate notice including their right to elect a cash distribution, a qualified plan can be amended to permit a default direct rollover under section 401(a)(31) of an involuntary cash-out without there being a violation of section 411(d)(6) of the Code.

Rev. Rul. 2000–36

ISSUE

Will an amendment to change the default method of payment to a direct rollover for involuntary distributions when a distributee fails affirmatively to elect to make a direct

rollover or to elect a cash payment under the facts described below cause the plan to fail to satisfy § 401(a)(31) or § 411(d)(6) of the Internal Revenue Code?

FACTS

Employer X maintains Plan A, a qualified defined contribution plan that does not include any after-tax contributions or other amounts that would not be included in gross income upon distribution. Plan A provides for an involuntary distribution to an employee upon separation from service if his or her vested account balance is $5,000 or less. Plan A includes a direct rollover option for all distributions. Plan A provides that if a separating employee's vested account balance is $5,000 or less, and the separating employee does not elect a direct rollover either to another qualified plan or to an individual retirement arrangement ("IRA"), the vested account balance is to be paid in a single sum cash payment to the employee.

Employer X amends Plan A to provide that the default form of payment of any involuntary cash-out from Plan A greater than $1,000 but less than or equal to $5,000 will be a direct rollover (an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee) to an IRA, but that separating employees will instead receive a cash payment if they so elect. Under the amendment, this default direct rollover applies only if the separating employee fails to request affirmatively (1) a cash payment to that employee or (2) a direct rollover to another qualified plan or an IRA designated by the separating employee. The amendment also provides that in the case of a default direct rollover, the plan administrator will select [1] an IRA trustee, custodian, or issuer (the "trustee") that is unrelated to Employer X, establish the IRA with that trustee on behalf of any separating employee who fails affirmatively to elect a direct rollover or a cash payment, and make the initial investment choices for the account.

The administrative procedures of Plan A are changed with respect to any § 402(f) notice provided on or after the effective date of the amendment to a separating employee with a vested account balance greater than $1,000 but not greater than $5,000. After the change, the plan administrator will include with the § 402(f) notice an explanation, as required by § 1.401(a)(31)–1 of the Income Tax Regulations, of the default direct rollover (and other appropriate information such as the name, address, and telephone number of the IRA trustee and information regarding IRA maintenance and withdrawal fees and how the IRA funds will be invested). The default direct rollover will occur not less than 30 days and not more than 90 days after the § 402(f) notice with the explanation of the default direct rollover is provided to the separating employee.

LAW AND ANALYSIS

Section 401(a)(31) provides, in part, that a trust shall not constitute a qualified trust unless the plan of which the trust is a part provides that if the distributee of any eligible rollover distribution (i) elects to have the distribution paid to an eligible retirement plan, and (ii) specifies the eligible retirement plan to which the distribution is to be paid, the distribution will be paid in a direct rollover to the eligible retirement plan specified.

Section 402(f) requires a plan administrator, within a reasonable period of time before making an eligible rollover distribution from an eligible retirement plan, to provide to the recipient a written explanation of the rollover provisions of § 401(a)(31) and § 402(c) (direct rollover and 60-day rollover), the 20-percent mandatory withholding requirement under § 3405, and other tax provisions in § 402 that apply to the eligible rollover distribution.

Section 411(d)(6)(A) provides, in part, that a plan participant's accrued benefit may not be decreased by a plan amendment other than by an amendment described in § 412(c)(8) of the Code or § 4281 of the Employee Retirement Income Security Act of 1974. Section 411(d)(6)(B) provides that an amendment eliminating or reducing an optional form of benefit is treated as an amendment reducing an employee's accrued benefit unless otherwise provided in Income Tax Regulations.

Section 1.401(a)(31)–1, Q&A-7 provides, in part, that a plan administrator may establish a default procedure so that if a distributee fails to make an affirmative election, he or she is treated as having made a direct rollover election. However, that regulation requires the plan administrator to first furnish the distributee with an explanation of the default procedure and an explanation of the direct rollover option within the time period provided in § 1.402(f)–1, Q&A-2 for the written explanation described in § 402(f).

Section 1.402(f)–1, Q&A-1 prescribes the general rule with respect to the contents of the written explanation (§ 402(f) notice) that must be provided to a distributee by a plan administrator before an eligible rollover distribution is made. Section 1.402(f)–1, Q&A-2 provides generally that the plan administrator must provide a distributee of an eligible rollover distribution with a § 402(f) notice no less than 30 days and no more than 90 days before the date of the distribution. Although a participant may, under the circumstances described in § 1.402(f)–1, Q&A-2, affirmatively elect to receive a distribution before the expiration of the 30 days after the receipt of a § 402(f) notice, that rule would not apply to a default direct rollover.

Section 1.411(d)–4, Q&A-1(a) defines a "section 411(d)(6) protected benefit" as a benefit described in § 411(d)(6)(A), early retirement benefits and retirement-type subsidies described in § 411(d)(6)(B)(i), and optional forms of benefit described in § 411(d)(6)(B)(ii) and provides that those benefits, to the extent that they are accrued, are subject to the protections of § 411(d)(6).

The default status of an optional form of benefit is not a section 411(d)(6) protected benefit. Thus, an amendment to change Plan A's default method of pay-

[1]The Department of Labor (the "DOL") has advised Treasury and the Service that, under Title I of the Employee Retirement Income Security Act ("ERISA"), in the context of a default direct rollover described in this ruling, where the distribution constitutes the entire benefit rights of the participant, the participant will cease to be a participant covered under the plan within the meaning of 29 CFR § 2510.3–3(d)(2)(ii)(B), and the distributed assets will cease to be plan assets within the meaning of 29 CFR § 2510.3–101. The DOL also noted that the selection of an IRA trustee, custodian or issuer and IRA investment for purposes of a default direct rollover would constitute a fiduciary act subject to the general fiduciary standards and prohibited transaction provisions of ERISA. In addition, plan provisions governing the default direct rollover of distributions, including the participant's ability to affirmatively opt out of the arrangement, must be described in the plan's summary plan description furnished to participants and beneficiaries.

ment for an involuntary distribution from a direct cash payment to a direct rollover does not violate § 411(d)(6). As required in § 1.401(a)(31)–1, Q&A-7, Plan A's procedures provide that each distributee subject to the default will receive an explanation of the default procedure and the direct rollover option within a time period before the default direct rollover that satisfies the timing requirements of § 1.402(f)–1, Q&A-2. Thus, the provision of a direct rollover as the default method of payment under the facts described above does not cause Plan A to fail to satisfy § 401(a)(31).

HOLDING

An amendment to change the default method of payment to a direct rollover as the default when a distributee fails affirmatively to elect to make a direct rollover or to elect a cash payment under the facts described above does not cause Plan A to fail to satisfy § 401(a)(31) or § 411(d)(6).

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Rubin of the Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, call the Employee Plans' taxpayer assistance telephone service at (202) 622-6074/6075 (not toll-free numbers) between 1:30 and 3:30 p.m. Eastern Time, Monday through Thursday. Mr. Rubin's telephone number is (202) 622-6214 (also not a toll-free call).

Section 457.—Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations

26 CFR 1.457–1: Compensation deferred under eligible deferred compensation plans.

Cash or deferred arrangements; nonqualified deferred compensation. This ruling specifies the criteria to be met in order to automatically defer a certain percentage of an employee's compensation into that employee's account in an eligible deferred compensation plan sponsored by the eligible employer.

Rev. Rul. 2000–33

ISSUE

Will a deferred compensation plan fail to be an "eligible deferred compensation plan" described in § 457(b) of the Internal Revenue Code merely because deferrals are made under an arrangement whereby a fixed percentage of an employee's compensation is deferred on the employee's behalf under the plan unless the employee affirmatively elects to receive the amount in cash?

FACTS

County M, a political subdivision of State X, maintains Plan A, an eligible deferred compensation plan described in § 457(b). Under Plan A, any employee of County M, including a newly hired employee, may choose to enter into an agreement pursuant to which the employee's taxable compensation is reduced and deferrals to the employee's account in Plan A are credited by County M on the employee's behalf. The employee may designate a percentage of the employee's compensation as elective deferrals, subject to the limitations of § 457(b). Plan A does not permit any other type of deferrals, and no other plan of County M permits employees to make elective deferrals. Deferrals under Plan A are immediately nonforfeitable and are subject to the limitations and requirements of § 457(b).

County M proposes to implement, effective the next January 1, an automatic election feature in Plan A under which, if a newly hired or current employee has not affirmatively elected to receive cash compensation or to have at least 2 percent of compensation deferred under Plan A, his or her compensation will automatically be reduced by 2 percent, and this amount will be credited to the employee's account in Plan A. An election not to make deferrals or to defer a different percentage of compensation can be made at any time. Elections filed at a later date are effective for the month next following the date the election is filed.

In the case of a new employee, the election not to make deferrals will be effective for the first month after the individual first became an employee and for subsequent months (until superseded by a subsequent election) if filed within a reasonable period of time ending before the beginning of the month. Thus, if a new employee files an election to receive cash in lieu of making deferrals and the election is filed a reasonable period ending before the beginning of the first month after the individual first becomes an employee, then no deferrals for that (or any subsequent) month are made on the employee's behalf to Plan A until the employee makes a subsequent affirmative election to reduce his or her compensation. At the time the employee is hired, the employee will receive a notice that explains the automatic election and the employee's right to elect to have no such deferrals made under the plan or to alter the amount of those deferrals, including the procedure for exercising that right and the timing for implementation of any such election.

The proposed amendment to Plan A also provides that, with respect to current employees, if the employee files an election to receive cash in lieu of making deferrals and the election is filed during the reasonable period ending on the January 1 effective date, then no deferrals for the period beginning on or after the January 1 effective date are made on the employee's behalf under Plan A until the employee makes a subsequent affirmative election to reduce his or her compensation. At the beginning of the reasonable period ending on the January 1 effective date, each current employee receives a notice that explains the new automatic election and the employee's right to elect to have no such deferrals made under the plan or to alter the amount of those deferrals, including the procedure for exercising that right and the timing for implementation of any such election.

Thereafter, each employee is notified annually of his or her deferral percentage, and of his or her right to change the percentage or to elect not to make deferrals, including the procedure for exercising that right and the timing for implementation of any such election.

Plan A provides that deferrals will be invested in accordance with the participant's election among a broad range of investment funds held by the trustee of Plan A or, if no investment election is made by a participant, in the trust's balanced fund which includes both diversified equity and fixed income investments.

LAW AND ANALYSIS

Section 457(a) provides that in the case of a participant in an eligible deferred compensation plan, any amount

of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary.

Section 457(b) defines the term "eligible deferred compensation plan." Section 457(b)(4) and §1.457–2(g) of the Income Tax Regulations provide that an "eligible deferred compensation plan" must provide that compensation will be deferred for any calendar month only if an agreement providing for the deferral has been entered into before the beginning of such month.

No provision of § 457(b) limits deferrals under an eligible plan to elective or voluntary deferrals, nor do the provisions of § 457(b) (including the limitations of § 457(b)(2) and (3)) distinguish between elective or voluntary deferrals and other types of deferrals. *See* Notice 87–13, Q &A 26, 1987–1 C.B. 432, 444. In the case of these other types of deferrals, the requirements of § 457(b)(4) are satisfied without the employee entering into an agreement to defer compensation. Rather, the obligation of the employer (or the obligation of the employee as a condition of employment) satisfies § 457(b)(4).

Similarly, the automatic election procedure described above will not cause a plan to fail the requirements of § 457(b)(4). In the absence of an affirmative election to the contrary entered into before the beginning of the month, deferrals with respect to compensation for the month will be made pursuant to the automatic election procedure. Alternatively, if an employee makes an affirmative election to change the automatic election and receive a corresponding amount in cash, the employee's affirmative election will govern any deferrals for the month. In either case, the deferrals for a month with respect to an employee are clearly established before the beginning of the month, and the requirements of § 457(b)(4) are satisfied.

HOLDING

Where, as under the proposed amendment to Plan A, the obligation to make deferrals with respect to an employee's compensation for a month is established before the beginning of a month by either an automatic election or by an agreement to alter the terms of the automatic election and receive cash in lieu of making deferrals, an eligible deferred compensation plan will satisfy the requirements of § 457(b)(4).

PAPERWORK REDUCTION ACT

The collection of information contained in this revenue ruling has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1695.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue ruling is in the third, fourth, and fifth paragraphs in the section headed "FACTS". The collection of information is necessary to ensure that the increased retirement savings due to automatic enrollment is truly voluntary. The collection of information is needed to obtain a benefit. The likely respondents are state and local governmental entities, and to a lesser extent, not-for-profit organizations.

The estimated total annual reporting burden is 500 hours. The estimated average annual burden per respondent is 1 hour. The estimated number of respondents is 500. The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue ruling is John Tolleris of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue ruling, contact him at (202) 622-6060 (not a toll free number).

Section 6012.—Persons Required to Make Returns of Income

26 CFR 1.6012–5: Composite return in lieu of specified form.

What are the obligations of those who participate in the Form 1040 IRS *e-file* program to the Service, taxpayers, and other participants. See Rev. Proc. 2000–31, page 146.

Section 6061.—Signing of Returns and Other Documents

26 CFR 1.6061–1: Signing of returns and other documents by individuals.

What are the obligations of those who participate in the Form 1040 IRS *e-file* program to the Service, taxpayers, and other participants. See Rev. Proc. 2000–31, page 146.

Section 6695.—Other Assessable Penalties With Respect to the Preparation of Income Tax Returns for Other Persons

26 CFR 1.6695(b): Failure to sign return.

T.D. 8893

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Retention of Income Tax Return Preparers' Signatures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide income tax return preparers with two alternative means of meeting the requirement that a preparer retain the copy of the return or claim manually signed by the preparer. The regulations are necessary to inform preparers about the two alternatives and to provide them with the guidance needed to comply with the alternatives.

DATES: *Effective Date:* These regulations are effective July 18, 2000.

Applicability Date: For dates of applicability, see §1.6695–1(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the penalty for failure to sign an income tax return under section 6695(b) of the Internal Revenue Code.

On December 31, 1998, final and temporary regulations (T.D. 8803, 1999–12 I.R.B. 15) under section 6695 were published in the **Federal Register** (63 F.R. 72182). A notice of proposed rulemaking (REG–106386–98, 1999–12 I.R.B. 31) cross-referencing the temporary regulations was published in the **Federal Register** (63 F.R. 72218) on the same date. Although written or electronic comments and requests for a public hearing were solicited, no comments were received and no public hearing was requested or held. The proposed regulations under section 6695 are adopted by this Treasury decision and the corresponding temporary regulations are removed.

Section 6695(b) provides that any person who is an income tax return preparer with respect to a return or claim for refund, who is required by regulations prescribed by the Secretary to sign the return or claim, and who fails to comply with those regulations, must pay a penalty of $50 for such failure, unless it is shown that the failure is due to reasonable cause and not willful neglect. The maximum penalty imposed with respect to documents filed during a calendar year will not exceed $25,000.

Section 7701(a)(36)(A) provides that, in general, the term *income tax return preparer* means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim is treated as if it were the preparation of such return or claim.

Section 1.6695–1(b)(1) generally provides that an income tax return preparer, with respect to a return or claim for refund, must manually sign the return or claim (which may be a photocopy) in the appropriate space provided on the return or claim after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

Explanation of Provisions

The final regulations provide that the employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim. In the alternative, the person required to retain the manually signed copy of the return or claim may either retain a photocopy of that manually signed copy or use an electronic storage system meeting the requirements of section 4 of Rev. Proc. 97–22 (1997–1 C.B. 652), or procedures subsequently prescribed by the Commissioner, to store and produce a copy of the return or claim manually signed by the preparer.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for section 1.6695–1T and by revising the entry for section 1.6695–1 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6695–1 also issued under 26 U.S.C. 6060(b) and 6695(b). * * *

Par. 2. Section 1.6695–1 is amended by:

1. Revising paragraph (b)(4)(i).
2. Adding paragraph (g).
3. Removing the authority citation immediately following the end of the section.

The revision and addition read as follows:

§1.6695–1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * *

(b) * * *

(4)(i) The manual signature requirement of paragraphs (b)(1) and (2) of this section may be satisfied by a photocopy of a copy of the return or claim for refund which copy is manually signed by the preparer after completion of its preparation. After a copy of the return or claim for refund is signed by the preparer and before it is photocopied, no person other than the preparer may alter any entries on the copy other than to correct arithmetical errors discernible on the return or claim for refund. The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim for refund. In the alternative, for a return or claim for refund presented to a taxpayer for signature after December 31, 1998, and for returns or claims for refund retained on or before that date, the person required to retain the manually signed copy of the return or claim for refund may choose to retain a photocopy of the manually signed copy of the return or claim for refund, or use an electronic storage system to store and pro-

duce a copy of the manually signed return or claim for refund. For purposes of this paragraph (b)(4)(i), an electronic storage system must meet the electronic storage system requirements prescribed in section 4 of Rev. Proc. 97–22 (1997–1 C.B. 652)(see §601.601(d)(2) of this chapter) or other procedures prescribed by the Commissioner. A record of any arithmetical errors corrected must be retained and made available upon request by the person required to retain the manually signed copy of the return or claim for refund.

* * * * *

(g) *Effective date*. This section applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 1998, and for returns or claims for refund retained on or before that date.

Section 1.6695–1T [Removed]

Par. 3. Section 1.6695–1T is removed.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved June 30, 2000.

Jonathan Talisman,
Deputy Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on July 17, 2000, 8:45 a.m., and published in the issue of the Federal Register for July 18, 2000, 65 F.R. 44436)

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.602: Tax forms and instructions. (Also Part I, sections 6012, 6061; 1.6012–5, 1.6061–1.)

Rev. Proc. 2000–31

CONTENTS

SECTION 1. PURPOSE

This revenue procedure informs those who participate in the IRS *e-file* Program of their obligations to the Internal Revenue Service, taxpayers, and other participants. The IRS *e-file* Program allows taxpayers to file their income tax returns through an Electronic Return Originator, or by using a personal computer, modem, and commercial tax preparation software (the Form 1040 IRS On-Line Filing Program). The following returns can be filed under the IRS *e-file* Program: (1) Form 1040 and Form 1040A, U. S. Individual Income Tax Return; and (2) Form 1040EZ, Income Tax Return for Single and Joint Filers with no Dependents. This revenue procedure modifies and supersedes Rev. Proc. 98–50, 1998–2 C.B. 368 (IRS *e-file* Program), and Rev. Proc. 98–51, 1998–2 C.B. 380 (Form 1040 IRS On-Line Filing Program).

SECTION 2. BACKGROUND AND CHANGES

.01 Section 1.6011–1(a) of the Income Tax Regulations provides that every person subject to income tax must make a return or statement as required by the regulations. The return or statement must include the information required by the applicable regulations or forms.

.02 Section 301.6061–1(b) of the Regulations on Procedure and Administration authorizes the Secretary to prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

.03 Section 1.6012–5 of the regulations provides that the Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in 26 CFR Part 1 (Income Tax), subject to the conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate.

.04 This revenue procedure combines the rules governing the IRS *e-file* Program with the rules governing the Form 1040 IRS On-Line Filing Program (previously set forth in Rev. Proc. 98–50 and Rev. Proc. 98–51, respectively).

.05 This revenue procedure incorporates substantive changes made to the IRS *e-file* Program, including changes to the definitions of program participants (see section 3 of this revenue procedure) and changes to the sanctions that may be imposed upon Authorized IRS *e-file* Providers (see section 7 of this revenue procedure).

.06 Many of the rules governing participation in the IRS *e-file* Program are now set forth in IRS Publications. See section 5.01 of this revenue procedure.

SECTION 3. DEFINITIONS

.01 A participant in the IRS *e-file* Program is referred to as an "Authorized IRS *e-file* Provider." The Authorized IRS *e-file* Provider categories are:

(1) ELECTRONIC RETURN ORIGINATOR. An "Electronic Return Originator" (ERO) originates the electronic submission of income tax returns.

(2) INTERMEDIATE SERVICE PROVIDER. An "Intermediate Service Provider" receives tax return information from an ERO (or from a taxpayer who files electronically using a personal computer, modem, and commercial tax preparation software), processes the tax return information, and either forwards the information to a Transmitter, or sends the information back to the ERO (or taxpayer).

(3) SOFTWARE DEVELOPER. A "Software Developer" develops software for the purposes of (a) formatting electronic tax return information according to Publication 1346, Electronic Return File Specifications and Record Layouts for Individual Income Tax Returns; and/or (b) transmitting electronic tax return information directly to the Service.

(4) TRANSMITTER. A "Transmitter" transmits electronic tax return information directly to the Service.

.02 The Authorized IRS *e-file* Provider categories are not mutually exclusive. For example, an ERO can, at the same time, be a Transmitter, Software Developer, or Intermediate Service Provider depending on the function(s) performed.

.03 A "Responsible Official" is an individual with authority over the IRS *e-file* operation of the office(s) of the Authorized IRS *e-file* Provider, is the first point of contact with the Service, and has authority to sign revised IRS *e-file* applications. A Responsible Official is responsible for ensuring that the Authorized IRS *e-file* Provider adheres to the provisions of this revenue procedure and the publications and notices governing the IRS *e-file* Program.

SECTION 4. ACCEPTANCE IN THE IRS *e-file* PROGRAM

.01 Individuals, businesses, and organizations that wish to participate in the IRS *e-file* Program must apply for participation and must be accepted by the Service.

.02 The procedures governing application to the IRS *e-file* Program are included in Publication 3112, The IRS *e-file* Application Package.

.03 The circumstances under which the Service may deny participation in the IRS *e-file* Program are included in Publi-

cation 1345, Handbook for Authorized *e-file* Providers of Individual Income Tax Returns. An applicant who is denied participation may seek administrative review of the denial. See section 8 of this revenue procedure.

.04 To continue participation in the IRS *e-file* Program, Authorized IRS *e-file* Providers must adhere to all requirements of this revenue procedure and the publications and notices governing the IRS *e-file* Program.

SECTION 5. RESPONSIBILITIES OF AN AUTHORIZED IRS *e-file* PROVIDER

.01 To ensure that returns are accurately and efficiently filed, an Authorized IRS *e-file* Provider must comply with the provisions of this revenue procedure and all publications and notices governing the IRS *e-file* Program. The Service will from time to time update such publications and notices to reflect changes to the program. It is the responsibility of the Authorized IRS *e-file* Provider to ensure that it complies with the latest version of all publications and notices. The publications and notices governing the IRS *e-file* Program include:

(1) Publication 1345, Handbook for Authorized IRS *e-file* Providers of Individual Income Tax Returns;

(2) Publication 1345A, Filing Season Supplement for Authorized IRS *e-file* Providers of Individual Income Tax Returns;

(3) Publication 1346, Electronic Return File Specifications and Record Layouts for Individual Income Tax Returns;

(4) Publication 1436, Test Package for Electronic Filing of Individual Income Tax Returns;

(5) Publication 3112, The IRS *e-file* Application Package; and

(6) Postings to the Electronic Filing System Bulletin Board (EFS Bulletin Board) and the IRS "Digital Daily" web site at: http://www.irs.gov on the Internet.

.02 The publications and notices listed in section 5.01 supplement this revenue procedure but do not supersede it. A violation of a provision of these publications and notices is considered a violation of this revenue procedure and may subject the participant to the sanctions provided in section 7 of this revenue procedure.

SECTION 6. PENALTIES

.01 *Penalties for Disclosure or Use of Information.*

(1) An Authorized IRS *e-file* Provider, except a Software Developer that does not have access to taxpayer information, is a tax return preparer under the definition of § 301.7216–1(b). A tax return preparer is subject to a criminal penalty for unauthorized disclosure or use of tax return information. See § 7216 of the Internal Revenue Code and § 301.7216–1(a). In addition, § 6713 establishes civil penalties for unauthorized disclosure or use of tax return information.

(2) Under § 301.7216–2(h), disclosure of tax return information among Authorized IRS *e-file* Providers for the purpose of electronically filing a return is permissible. For example, an ERO may pass on tax return information to an Intermediate Service Provider and/or a Transmitter for the purpose of having an electronic return formatted and transmitted to the Service.

.02 *Other Preparer Penalties.*

(1) Preparer penalties may be asserted against an individual or firm meeting the definition of an income tax return preparer under § 7701(a)(36) and § 301.7701–15. Preparer penalties that may be asserted under appropriate circumstances include, but are not limited to, those set forth in §§ 6694, 6695, and 6713.

(2) Under § 301.7701–15(d), Authorized IRS *e-file* Providers are not income tax return preparers for the purpose of assessing most preparer penalties as long as their services are limited to "typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund."

(3) If an ERO, Intermediate Service Provider, Transmitter, or the product of a Software Developer alters the return information in a nonsubstantive way, this alteration will be considered to come under the "mechanical assistance" exception described in § 301.7701–15(d). A nonsubstantive change is a correction or change limited to a transposition error, misplaced entry, spelling error, or arithmetic correction.

(4) If an ERO, Intermediate Service Provider, Transmitter, or the product of a Software Developer alters the return information in a way that does not come under the "mechanical assistance" exception, the Authorized IRS *e-file* Provider may be held liable for income tax return preparer penalties. See § 301.7701–15; Rev. Rul. 85–189, 1985–2 C.B. 341 (which describes a situation where a Software Developer was determined to be an income tax return preparer and subject to certain preparer penalties).

.03 *Other Penalties.* In addition to the above specified provisions, the Service reserves the right to assert all appropriate preparer, nonpreparer, and disclosure penalties against an Authorized IRS *e-file* Provider as warranted under the circumstances.

SECTION 7. MONITORING AND SANCTIONING OF AN AUTHORIZED IRS *e-file* PROVIDER

.01 The Service will monitor Authorized IRS *e-file* Providers for compliance with the rules governing the IRS *e-file* Program. The Service may sanction an Authorized IRS *e-file* Provider for violating any provision of this revenue procedure or the publications and notices governing the IRS *e-file* Program.

.02 Sanctions that the Service may impose upon an Authorized IRS *e-file* Provider for violations described in section 7.01 of this revenue procedure include a written reprimand, suspension or expulsion from the program, and other sanctions, depending on the seriousness of the infraction. Publication 1345 describes the infraction categories and the rules governing the imposition of sanctions.

SECTION 8. ADMINISTRATIVE REVIEW PROCESS

.01 An applicant that has been denied participation in the IRS *e-file* Program (see section 4.03 of this revenue procedure) has the right to an administrative review. During the administrative review process, the denial of participation remains in effect.

.02 An Authorized IRS *e-file* Provider may seek administrative review for any sanction the Service may impose under section 7 of this revenue procedure.

.03 Publication 1345 describes the procedures regarding administrative review of a denial of participation in the IRS *e-file* Program and any sanction imposed by the Service.

SECTION 9. PILOT PROGRAMS

.01 The Service regularly conducts pilot programs to introduce new technology into the IRS *e-file* Program. These pilot programs are usually conducted within a limited geographic area or within a limited taxpayer or practitioner community. The Service establishes rules for participating in these pilot programs and embodies these rules in an implementing document typically referred to as a "Memorandum of Understanding" (MOU) or "Memorandum of Agreement" (MOA). Pilot participants must agree to the provisions of the implementing document in order to participate in the pilot program.

.02 An implementing document supplements this revenue procedure, but does not supersede it. Participants in a pilot program remain subject to the provisions of this revenue procedure unless the implementing document specifically provides otherwise.

.03 A violation of a provision of an implementing document is considered a violation of this revenue procedure and may subject the participant to sanctions (see section 7 of this revenue procedure).

SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 98–50, 1998–2 C.B. 368, and Rev. Proc. 98–51, 1998–2 C.B. 380, are modified and, as modified, are superseded.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective July 13, 2000, except for the provisions of section 7 of this revenue procedure, which are effective for sanctions imposed on or after January 1, 2001.

SECTION 12. INTERNAL REVENUE SERVICE OFFICE CONTACT

All questions regarding this revenue procedure should be directed to the Internal Revenue Service. The telephone number for this purpose is (202) 283-0531 (not a toll-free number).

Part IV. Items of General Interest

Automatic Enrollment Features in Prototype Section 401(k) Plans

Announcement 2000–60

The Service would like to bring to the attention of prototype plan sponsors and employers that currently maintain, or are considering adopting, § 401(k) plans the availability of automatic enrollment features in pre-approved § 401(k) plans. In general, § 401(k) plans that have automatic enrollment features reportedly have had significantly higher employee participation rates than § 401(k) plans without such features.

Under an automatic enrollment feature in an employer's § 401(k) plan, a participant's compensation is automatically reduced by a specified percentage, and that amount is contributed as an elective contribution on the participant's behalf to the plan, unless the participant affirmatively elects not to have his or her compensation reduced or to have it reduced by a different amount. See Rev. Rul. 2000–8, 2000–7 I.R.B. 617 (February 14, 2000).

The Service "pre-approves" certain tax-qualified retirement plans, including § 401(k) plans, under the Service's prototype plan program, which is set forth in Rev. Proc. 2000–20, 2000–6 I.R.B. 553. Prototype plans are submitted by sponsors to the Service for review for compliance with applicable laws and procedures. Sponsors, who may be financial institutions or others, offer their Service-approved prototype plans to employers to adopt for the benefit of employees.

Bad Debt Reserves of Thrift Institutions

Announcement 2000–63

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of proposed regulations.

SUMMARY: This document withdraws proposed regulations amending the income tax regulations. This action is taken to remove from the IRS' inventory of regulations projects certain proposed regulations that will not be published in final form because under a subsequent amendment the underlying statute does not apply to taxable years beginning after December 31, 1995.

DATES: These proposed regulations are withdrawn July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Wojay, of the Office of Assistant Chief Counsel, Financial Institutions and Products, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224. Telephone (202) 622-3920, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document withdraws certain proposed regulations previously published in the **Federal Register** (FI–42–90, 1992–1 C.B. 1072 [57 F.R. 1232]) by the IRS. These proposed regulations, §§1.593–12, 1.593–13, and 1.593–14, are being withdrawn because under a subsequent amendment the underlying statute, section 593, does not apply subsections (a), (b), (c), and (d) to taxable years beginning after December 31, 1995.

Drafting Information

The principal author of this withdrawal notice is Craig Wojay, Office of the Assistant Chief Counsel (Financial Institutions and Products) within the Office of the Chief Counsel, IRS. However, other personnel from the IRS and the Treasury Department participated in developing the withdrawal notice.

* * * * *

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the proposed rulemaking that was published in the **Federal Register** on Monday, January 13, 1992 (57 F.R. 1232) is withdrawn.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on July 11, 2000, 8:45 a.m., and published in the issue of the Federal Register for July 12, 2000, 65 F.R. 42900)

Supplemental Information on Treasury Bills for Publication 1212

Announcement 2000–64

Banks, brokers, and other middlemen who report discount on Treasury bill redemptions on Form 1099–INT must use the owner's purchase price, where available, to determine the amount of discount to report. This information can usually be obtained from the owner's or middleman's records. However, if the owner's purchase price is not available from existing records, the middleman must report the discount as if the holder had purchased the Treasury bill at its original issue price. In this case, the middleman must use as the original issue price the noncompetitive issue price for the longest-maturity Treasury bill maturing on that date.

For Treasury bill redemptions when the owner's purchase price *cannot* be determined, the following list gives the noncompetitive issue prices and corresponding amounts of discount to be reported on Form 1099–INT for Treasury bills maturing May through July 2000. This list, which should also help middlemen determine any amounts subject to backup withholding, supplements the list that appears in 1999 edition of Publication 1212, *List of Original Issue Discount Instruments.*

Short-Term United States Treasury Bills
Issued at a Discount and Maturing August 2000-December 2000

	CUSIP Number	Maturity Date	Issue Date	Noncompetitive Issue Price (% of Principal Amount)	Dollar Amount of OID to be reported (per $1,000 of Maturity Value)
	912795EV9	08/03/2000	02/02/2000	97.116	28.84
	912795EW7	08/10/2000	02/10/2000	97.083	29.17
*	912795EE7	08/17/2000	08/19/1999	95.000	50.00
	912795EX5	08/24/2000	02/24/2000	97.085	29.15
	912795EY3	08/31/2000	03/02/2000	97.085	29.15
	912795EZ0	09/07/2000	03/09/2000	97.055	29.45
*	912795EF4	09/14/2000	09/16/1999	94.944	50.56
	912795FA4	09/21/2000	03/23/2000	97.202	27.98
	912795FB2	09/28/2000	03/30/2000	97.015	29.85
	912795FC0	10/05/2000	04/06/2000	97.017	29.83
*	912795EG2	10/12/2000	10/14/1999	94.828	51.72
	912795FD8	10/19/2000	04/20/2000	97.085	29.15
	912795FE6	10/26/2000	04/27/2000	97.096	29.04
	912795FF3	11/02/2000	05/04/2000	97.000	30.00
*	912795EH0	11/09/2000	11/12/1999	94.787	52.13
	912795FG1	11/16/2000	05/18/2000	96.840	31.60
	912795FH9	11/24/2000	05/25/2000	96.886	31.14
	912795FJ5	11/30/2000	06/01/2000	96.891	31.09
*	912795EJ6	12/07/2000	12/09/1999	94.591	54.09
	912795FK2	12/14/2000	06/15/2000	96.964	30.36
	912795FL0	12/21/2000	06/22/2000	97.007	29.93
	912795FM8	12/28/2000	06/29/2000	96.989	30.11

* 52-week bill

Tax Treatment of Cafeteria Plans; Public Hearing

Announcement 2000–65

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to the tax treatment of cafeteria plans.

DATES: The public hearing is being held on August 17, 2000, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by August 3, 2000.

ADDRESSES: The public hearing is being held in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Regulations Unit CC (REG–117162–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC (REG–117162–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting them directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Treena Garrett, (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed regulations (REG–117162–99, 2000–15 I.R.B. 871) that was published in the **Federal Register** on March 23, 2000 (65 F.R. 15587).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by August 3, 2000.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this document.

Cynthia E. Grigsby,
Chief, Regulations Unit,
Office of Special Counsel,
(Modernization and Strategic Planning).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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